

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.B. 1008

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 28-673, Arizona Revised Statutes, is amended to  
3 read:

4 28-673. Traffic accidents; implied consent; tests

5 A. A person who operates a motor vehicle within this state gives  
6 consent to a test or tests of the person's blood, breath, urine or other  
7 bodily substance for the purposes of determining alcohol concentration or  
8 drug content if the person is involved in a traffic accident resulting in  
9 death or serious physical injury as defined in section 13-105 and a law  
10 enforcement officer has probable cause to believe that the person caused the  
11 accident or the person is issued a citation for a violation of any provision  
12 of this article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of  
13 this title.

14 B. The test or tests chosen by the law enforcement agency shall be  
15 administered at the direction of a law enforcement officer who has reasonable  
16 grounds to believe that the person was involved in a traffic accident  
17 resulting in death or serious physical injury as defined in section 13-105  
18 and who has probable cause to believe that the person caused the accident or  
19 the person was issued a citation for a violation of any provision of this  
20 article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of this  
21 title.

22 C. After a determination is made that a person was involved in a  
23 traffic accident resulting in death or serious physical injury as defined in  
24 section 13-105 and the officer has probable cause to believe that the person  
25 caused the accident or the person was issued a citation for a violation of  
26 any provision of this article, article 2, 3 or 5 through 15 of this chapter  
27 or chapter 4 of this title, the person may be requested to submit to and  
28 successfully complete any test or tests prescribed by subsection A of this  
29 section, and if the person refuses, the person shall be informed that the

1 person's license or permit to drive will be suspended or denied for twelve  
2 months, or for two years for a second or subsequent refusal in a period of  
3 eighty-four months, unless the person expressly agrees to submit to and  
4 successfully completes the test or tests. A failure to expressly agree to  
5 the test or successfully complete the test is deemed a refusal. The person  
6 shall also be informed that if the test results show a blood or breath  
7 alcohol concentration of 0.08 or more, or if the results show a blood or  
8 breath alcohol concentration of 0.04 or more and the person was driving or in  
9 actual physical control of a commercial motor vehicle, the person's license  
10 or permit to drive will be suspended or denied for not less than ninety  
11 consecutive days.

12 D. If a person refuses to submit to the test designated by the law  
13 enforcement agency as provided in subsection B of this section:

14 1. The test shall not be given, except as provided in section 28-1388,  
15 subsection E or pursuant to a search warrant.

16 2. The law enforcement officer directing the administration of the  
17 test shall:

18 (a) File a certified report of the refusal with the department.

19 (b) On behalf of the department, serve an order of suspension on the  
20 person that is effective fifteen days after the date the order is served.

21 (c) Require the immediate surrender of any license or permit to drive  
22 that is issued by this state and that is in the possession or control of the  
23 person.

24 (d) If the license or permit is not surrendered, state the reason why  
25 it is not surrendered.

26 (e) If a valid license or permit is surrendered, issue a temporary  
27 driving permit that is valid for fifteen days.

28 (f) Forward the certified report of refusal, a copy of the completed  
29 notice of suspension, a copy of any completed temporary permit and any driver  
30 license or permit taken into possession under this section to the department  
31 within five days after the issuance of the notice of suspension.

1           E. Section 28-1321, subsections E through P apply to any test  
2 prescribed by this section and to any person who refuses to submit to a test  
3 prescribed by this section, except that:

4           1. The certified report shall state the law enforcement officer's  
5 reasonable grounds to believe that the person was involved in a traffic  
6 accident resulting in death or serious physical injury as defined in section  
7 13-105 and the law enforcement officer's probable cause to believe that the  
8 person caused the accident or the person was issued a citation for a  
9 violation of any provision of this article, article 2, 3 or 5 through 15 of  
10 this chapter or chapter 4 of this title.

11           2. The certified report shall be filed pursuant to subsection D of  
12 this section.

13           3. The scope of the hearing shall include the law enforcement  
14 officer's probable cause to believe that the person was involved in a traffic  
15 accident resulting in death or serious physical injury as defined in section  
16 13-105 and the law enforcement officer's probable cause to believe that the  
17 person caused the accident or the person was issued a citation for a  
18 violation of any provision of this article, article 2, 3 or 5 through 15 of  
19 this chapter or chapter 4 of this title.

20           F. A person who is dead, unconscious or otherwise in a condition  
21 rendering the person incapable of refusal is deemed not to have withdrawn the  
22 consent provided by subsection A of this section and the test or tests shall  
23 be administered.

24           G. IF THE LAW ENFORCEMENT OFFICER HAS REASONABLE GROUNDS TO BELIEVE  
25 THE PERSON SUBJECT TO SUBSECTION A OF THIS SECTION WAS UNDER THE INFLUENCE OF  
26 INTOXICATING LIQUOR OR DRUGS, THE OFFICER SHALL ALSO SERVE AN ORDER OF  
27 SUSPENSION ON BEHALF OF THE DEPARTMENT. THE ORDER OF SUSPENSION SHALL  
28 SUSPEND THE PERSON'S DRIVER LICENSE OR PRIVILEGE TO DRIVE FOR NINETY  
29 CONSECUTIVE DAYS. THE ORDER OF SUSPENSION:

30           1. IS EFFECTIVE IMMEDIATELY ON SERVICE BY THE LAW ENFORCEMENT OFFICER.

31           2. SHALL REQUIRE THE IMMEDIATE SURRENDER OF ANY LICENSE OR PERMIT  
32 ISSUED BY THIS STATE IN POSSESSION OF THE PERSON.

1           3. SHALL CONTAIN INFORMATION CONCERNING THE RIGHT TO A HEARING.

2           4. SHALL BE ACCOMPANIED BY PRINTED FORMS THAT THE PERSON MAY FILL OUT  
3 AND SIGN AND MAIL TO THE APPROPRIATE JURISDICTION TO REQUEST A HEARING.

4           5. SHALL BE ENTERED ON THE DEPARTMENT'S RECORDS UPON RECEIPT OF THE  
5 REPORT BY THE OFFICER AND A COPY OF THE ORDER OF SUSPENSION.

6           H. THE PERSON MAY SUBMIT A WRITTEN REQUEST TO THE EXECUTIVE HEARING  
7 OFFICE OF THE DEPARTMENT FOR A HEARING TO CONTEST AN ORDER OF SUSPENSION  
8 ISSUED UNDER SUBSECTION G OF THIS SECTION. THE REQUEST MUST BE RECEIVED  
9 WITHIN SEVEN DAYS AFTER THE ORDER OF SUSPENSION IS SERVED. THE DEPARTMENT  
10 SHALL TRANSMIT THE REQUEST FOR A HEARING AND THE ORDER OF SUSPENSION FILED  
11 PURSUANT TO SUBSECTION G OF THIS SECTION TO THE JUSTICE COURT OF THE PRECINCT  
12 IN WHICH THE ACCIDENT OCCURRED. THE JUSTICE COURT SHALL CONDUCT THE HEARING  
13 WITHIN FIFTEEN DAYS AFTER RECEIPT OF THE REQUEST FOR A HEARING AND ORDER OF  
14 SUSPENSION. THE ATTORNEY FOR THE LAW ENFORCEMENT AGENCY THAT SUBMITTED THE  
15 ORDER OF SUSPENSION SHALL REPRESENT THE AGENCY AT THE HEARING.

16           I. THE SCOPE OF A HEARING UNDER SUBSECTION H OF THIS SECTION SHALL  
17 INCLUDE ONLY THE FOLLOWING ISSUES:

18           1. WHETHER THE OFFICER HAD REASONABLE GROUNDS TO BELIEVE THE PERSON  
19 CAUSED AN ACCIDENT RESULTING IN DEATH OR SERIOUS PHYSICAL INJURY AS DEFINED  
20 IN SECTION 13-105, OR WAS ISSUED A CITATION FOR A VIOLATION OF ANY PROVISION  
21 IN THIS ARTICLE, ARTICLE 2, 3 OR 5 THROUGH 15 OF THIS CHAPTER OR CHAPTER 4 OF  
22 THIS TITLE.

23           2. WHETHER THE OFFICER HAD REASONABLE GROUNDS TO BELIEVE THE PERSON  
24 WAS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

25           J. THE DEPARTMENT AND THE SUPREME COURT MAY ADOPT RULES AS NECESSARY  
26 TO IMPLEMENT THIS SECTION.”

27 Amend title to conform

RON GOULD

1/11/08  
3:52 PM  
S: RD/jas